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In re Application of
TAKAHASHI, et al.
Application No.: 10/507,117
Filing Date: 10 September 2004
Attorney Docket No.: 029471-0168
For: SEMICONDUCTOR MEMORY DEVICE
AND SEMICONDUCTOR MEMORY
DEVICE CONTROL METHOD

DECISION ON PETITION
UNDER 37 CFR 1.182

This is a decision on applicants' "Petition to Convert Under 37 C.F.R. § 1.182" filed on 23 December 2004 in the United States Patent and Trademark Office (USPTO), which requests that the application papers submitted on 10 September 2004 be considered a filing under 35 U.S.C. 111. The petition is being treated as a petition under 37 CFR 1.181. As no petition fee is required, the \$130.00 payment will be refunded to Deposit Account No.: 19-0741.

BACKGROUND

On 26 February 2003, applicants filed international application no. PCT/JP03/02095 which claimed a priority date of 15 March 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 15 September 2004.

On 10 September 2004, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; a preliminary amendment, and an application data sheet.

On 23 December 2004, applicants filed a "Petition to Convert" requesting that the application papers submitted on 10 September 2004 be considered a filing under 35 U.S.C. 111.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

The documents and fees submitted . . . must be clearly
identified as a submission to enter the national stage under 35

U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a), page 1800-190 of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

On 10 September 2004, applicants submitted a specification which stated "The present application is a continuing of International Application Number PCT/JP03/02095, filed on February 26, 2003, and claims priority to Japanese Patent Application Number 2002-72953 filed on March 15, 2002, which are incorporated by reference in their entirety." The statement in the specification is inconsistent with an intent to enter the National stage of the PCT under 35 U.S.C. 371. Accordingly, the original papers deposited on 10 September 2004 should have been treated as a filing under 35 U.S.C. 111(a).

CONCLUSION

The petition to convert the application from a national stage application under 35 U.S.C. 371 to a 35 U.S.C. 111 filing is GRANTED.

As discussed above, the \$130.00 petition payment will be refunded to Deposit Account No.: 19-0741.

The application will be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a).



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